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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,223	04/08/2004	Paul T. Van Gompel	659-2246	9394
757 7590 06/22/2007 BRINKS HOFER GILSON & LIONE P.O. BOX 10395 CHICAGO, IL 60610			EXAMINER HAND, MELANIE JO	
			ART UNIT 3761	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/821,223

Applicant(s)

VAN GOMPEL, PAUL T.

Examiner

Melanie J. Hand

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20,22 and 24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20,22,24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

Applicant's arguments filed April 2, 2007 have been fully considered but they are not persuasive.

With respect to applicant's arguments regarding the rejection of claims 1-20, 22 and 24 as unpatentable over Lovison in view of Hamilton: In response to applicant's arguments against the Lovison reference individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Applicant does argue the combination inasmuch as applicant argues that there is no motivation to combine the articles of Lovison and Hamilton. Examiner disagrees with this argument. The two articles set forth equivalent ways of solving the problem of creating an absorbent garment that fits essentially all users, that is, an abdominally encircling elastic member and a refastenable, and thus adjustable, waist opening. Though the Lovison device may not appear to suggest a refastenable side seam, such a side seam would not in fact destroy the function of the article of Lovison, as the function of that article is to provide quick access, removal and replacement of a removable crotch portion. If the side seams of Lovison were refastenable, this function would still be accomplished with equal ease. Further applicant is reminded that the claims only set forth a crotch portion having terminal edges that bridges the gap between the claimed first and second panels. There is no claim limitation that exists that sets forth the existence of a bond or attachment. Thus for all intents and purposes, the invention as claimed also has a completely removable crotch portion as taught by Lovison in combination with refastenable side seams. Thus, by arguing that the modification of the Lovison article to

contain refastenable side seams as taught by Hamilton destroys the function of the Lovison device, applicant is implying that the claimed invention is not enabled by the disclosure.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-20, 22 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lovison (U.S. Patent No. 4,022,212) in view of Hamilton (U.S. Patent No. 6,911,023).

With respect to **Claim 1**: Lovison teaches a refastenable absorbent garment A comprising: a first body panel 13 having first and second opposite side edges 60; a second body panel 15 having first and second opposite side edges 60, a crotch portion B extending between said first and second body panels, wherein said first body panel 13 has a first terminal crotch edge 14 and said second body panel 15 has a second terminal crotch edge 16 longitudinally spaced from said first terminal crotch edge 14 so as to form a gap therebetween, wherein said crotch portion B bridges said gap and overlies said first and second terminal crotch edges 14,16 as seen in Fig. 3. ('212, Figs. 3,4, Col. 2, lines 29-49)

Lovison does not teach at least first and second fastener members fixedly secured to and extending outboard from said first and second side edges 60. Hamilton teaches an absorbent article with at least first and second fastener members 65 fixedly secured to and extending outboard from said first and second opposite side edges of said first body panel respectively, wherein each of said first and second fastener members 70 comprises a refastenable portion 72. First and second extension members 61,64 are fixedly secured to and

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extend outboard from said first and second opposite side edges 20 of the rear waist region, wherein said refastenable portion 72 of said first fastener member 70 releasably engages said first extension member 61 and wherein said refastenable portion 72 of said second fastener member 70 releasably engages said second extension member 64. Hamilton teaches that the extension member configuration provides improved fit and reduced marking of the user's skin ('023, Col. 21, lines 35-39), therefore it would be obvious to one of ordinary skill in the art to substitute the fastening means taught by Lovison with the fastening means taught by Hamilton to provide better fit and reduced skin marking. ('023, Col. 4, lines 9-28, Col. 13, lines 61-67, Col. 14, lines 40-60)

With respect to **Claims 2,15**: Hamilton teaches that said refastenable portion 72 comprises a hook material. ('023, Col. 15, lines 16-22)

With respect to **Claims 3,16**: First and second extension portions 61,64 taught by Hamilton comprise a loop material 68 configured to releasably engage said hook material. ('023, Col. 15, lines 57-60)

With respect to **Claims 4,17**: First and second extension members 61,64 taught by Hamilton have an outboard curved edge. ('023, Fig. 1)

With respect to **Claims 5,18**: First and second extension members 61,64 taught by Hamilton are elasticized. ('023, Col. 14, lines 1-8)

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With respect to **Claim 6**: At least a portion of said first and second fastener members 70 taught by Hamilton are elasticized. (Col. 15, lines 1,2)

With respect to **Claim 7**: Hamilton teaches a refastenable absorbent garment 20 comprising a first body panel 36 having first and second opposite side edges 20; a second body panel 38 having first and second opposite side edges 20; a crotch portion 37 extending between said first and second body panels; at least a first fastener member 70 and a second fastener member 70, fixedly secured to and extending outboard from said first and second opposite side edges 20 of said first body panel 36 respectively, wherein each of said first and second fastener members 70 comprises a refastenable portion 72; and first and second extension members 61,64 fixedly secured to and extending outboard from said first and second opposite side edges 20 of said second body panel 38 respectively, wherein said refastenable portion 72 of said first fastener member 70 releasably engages said first extension member 61 and wherein said refastenable portion 72 of said second fastener member 70 releasably engages said second extension member 64 wherein said first and second extension members 61,64 are secured to a bodyside surface of said second body panel member 38. ('023, Col. 4, lines 9-28, Col. 13, lines 61-67; Col. 14, lines 40-60)

With respect to **Claim 8**: First and second extension members 61,64 are bonded to said first and second opposite side edges 20 of said second body panel 80 respectively. ('023, Col. 11, lines 54-63, Col. 12, lines 58-60)

With respect to **Claim 9**: First and second extension members 61,64 are bonded to said first and second opposite side edges 20 of said second body panel 38. Hamilton does not explicitly

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teach the mode of bonding, however since Hamilton teaches adhesive for substantially all other fastening mechanisms of the article (e.g. bonding topsheet 24 to backsheet 26) so as to separate them from one another), it would be obvious to one of ordinary skill in the art to employ adhesive bonding to bond said first and second extension members 61,64 to said first and second opposite side edges 20. ('023, Col. 5, lines 48-50)

With respect to **Claim 10**: First and second extension members 61,64 are bonded to said first and second opposite side edges 20 of said second body panel 38. Hamilton does not explicitly teach the mode of bonding, however since Hamilton teaches sonic bonding for substantially all other fastening mechanisms of the article, it would be obvious to one of ordinary skill in the art to employ sonic bonding to bond said first and second extension members 61,64 to said first and second opposite side edges 20. ('023, Col. 5, lines 65-67)

With respect to **Claim 11**: Hamilton teaches a refastenable absorbent garment 20 comprising: a first body panel 36 having first and second opposite side edges 20; a second body panel 38 having first and second opposite side edges 20; a crotch portion 37 extending between said first and second body panels; at least a first fastener member 70 and a second fastener member 70 fixedly secured to and extending outboard from said first and second opposite side edges 20 of said first body panel 36, wherein said first and second fastener members 70 are bonded to said first and second opposite side edges 20 of said first body panel 36, wherein each of said first and second fastener members 70 comprises a refastenable portion 72; and first and second extension members 61,64 fixedly secured to and extending outboard from said first and second opposite side edges 20 of said second body panel 38 respectively, wherein said refastenable portion 72 of said first fastener member 70 releasably engages said first extension member 61

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and wherein said refastenable portion 72 of said second fastener member 70 releasably engages said second extension member 64. ('023, Col. 4, lines 9-28, Col. 13, lines 61-67, Col. 14, lines 40-60)

With respect to **Claim 12**: First and second fastener members 70 each comprise a carrier member supporting said refastenable portion 72. ('023, Fig. 6)

With respect to **Claim 13**: The said carrier member comprises a pair of tabs supporting first and second refastenable portions 72. ('023, Fig. 6)

With respect to **Claim 14**: Lovison teaches a refastenable absorbent garment A comprising: a first body panel 13 having first and second opposite side edges 60; a second body panel 15 having first and second opposite side edges 60, a crotch portion B extending between said first and second body panels, wherein said first body panel 13 has a first terminal crotch edge 14 and said second body panel 15 has a second terminal crotch edge 16 longitudinally spaced from said first terminal crotch edge 14 so as to form a gap therebetween, wherein said crotch portion B bridges said gap and overlies said first and second terminal crotch edges 14, 16 as seen in Fig. 3. ('212, Figs. 3, 4, Col. 2, lines 29-49)

Lovison does not teach at least first and second fastener members fixedly secured to and extending outboard from said first and second side edges 60. Hamilton teaches an absorbent article with at least first and second fastener members 65 fixedly secured to and extending outboard from said first and second opposite side edges of said first body panel respectively, wherein each of said first and second fastener members 70 comprises a carrier portion bonded to said first and second opposite side edges 20 and a refastenable portion 72

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supported by said carrier portion. First and second extension members 61,64 are fixedly secured to and extend outboard from said first and second opposite side edges 20 of the rear waist region, wherein said refastenable portion 72 of said first fastener member 70 releasably engages said first extension member 61 and wherein said refastenable portion 72 of said second fastener member 70 releasably engages said second extension member 64. Hamilton teaches that the extension member configuration provides improved fit and reduced marking of the user's skin ('023, Col. 21, lines 35-39), therefore it would be obvious to one of ordinary skill in the art to substitute the fastening means taught by Lovison with the fastening means taught by Hamilton to provide better fit and reduced skin marking. ('023, Col. 4, lines 9-28, Col. 13, lines 61-67, Col. 14, lines 40-60)

With respect to **Claim 19**: Hamilton teaches a refastenable absorbent garment 20 comprising a first body panel 36 having first and second opposite side edges 20; a second body panel 38 having first and second opposite side edges 20; a crotch portion 37 extending between said first and second body panels; at least a first fastener member 70 and a second fastener member 70, fixedly secured to and extending outboard from said first and second opposite side edges 20 of said first body panel 36 respectively, wherein each of said first and second fastener members 70 comprises a carrier member supporting said refastenable portion 72; and first and second extension members 61,64 fixedly secured to and extending outboard from said first and second opposite side edges 20 of said second body panel 38 respectively, wherein said refastenable portion 72 of said first fastener member 70 releasably engages said first extension member 61 and wherein said refastenable portion 72 of said second fastener member 70 releasably engages said second extension member 64 wherein said first and second extension members

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61,64 are secured to a bodyside surface of said second body panel member 38. ('023, Col. 4, lines 9-28, Col. 13, lines 61-67, Col. 14, lines 40-60)

With respect to **Claim 20**: Hamilton teaches a refastenable absorbent garment comprising: a first body panel 36 having first and second opposite side edges 20; a second body panel 38 having first and second opposite side edges 20; a crotch portion 37 extending between said first and second body panels; at least a first fastener member 70 and a second fastener member 70 fixedly secured to and extending outboard from said first and second opposite side edges 20 of said first body panel 36, wherein said first and second fastener members 70 are bonded to said first and second opposite side edges 20 of said first body panel 36, wherein each of said first and second fastener members 70 comprises a carrier member that further comprises a pair of tabs supporting first and second refastenable portions 72; and first and second extension members 61,64 fixedly secured to and extending outboard from said first and second opposite side edges 20 of said second body panel 38 respectively, wherein said refastenable portion 72 of said first fastener member 70 releasably engages said first extension member 61 and wherein said refastenable portion 72 of said second fastener member 70 releasably engages said second extension member 64. ('023, Col. 4, lines 9-28, Col. 13, lines 61-67, Col. 14, lines 40-60)

With respect to **Claim 22**: As can be seen in Fig. 8A taught by Hamilton, first and second extension members 61,64 each comprise an inboard terminal edge and an outboard terminal edge, wherein said first and second extension members 61,64 are formed separately from said second body panel 38, and wherein said outboard terminal edges of said first and second

extension members 61,64 are laterally spaced outboard from said first and second opposite side edges 20 of said second body panel 38.

With respect to **Claim 24**: First and second extension members 61,64 each comprise an inboard terminal edge and an outboard terminal edge as seen in Fig. 8A taught by Hamilton, wherein said first and second extension members 61,64 are formed separately from said second body panel 38, and wherein said outboard terminal edges of said first and second extension members 61,64 are laterally spaced outboard from said first and second opposite side edges 20 of said second body panel 38 respectively.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie J Hand
Examiner
Art Unit 3761

June 19, 2007

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

